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November 15, 2017

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**Re: Notice of *Ex Parte* Filing,
Zipwhip, Inc., WC Docket No. 95-155; WT Docket No. 08-7**

Dear Ms. Dortch:

Zipwhip, Inc. submits this letter to address recent *ex parte* filings in the Federal Communication Commission's ("FCC" or the "Commission") record for the petition for declaratory ruling from Somos, Inc.¹ that make specious claims about Zipwhip and present incorrect information about what would result from granting Somos' petition. Sadly, we have seen this behavior by Somos and its proxies before. Every few months they attempt to revive the matters in this proceeding by making false claims about Zipwhip, the status of the texting to toll-free marketplace, and the nature of the request it seeks.

The fact is Somos seeks new rules that would require registration of text-enabled toll-free numbers and the procedural mechanism it has chosen is improper. If the Commission granted Somos' Petition, it would serve as a significant expansion of the scope of the existing rules

¹ Petition of Somos, Inc. for a Declaratory Ruling Regarding Registration of Text-Enabled Toll-Free Numbers, WC Docket No. 95-155 (filed Oct. 28, 2016) (Petition). See Public Notice, Wireline Competition Bureau Seeks Comment on Somos, Inc. Petition for Declaratory Ruling Regarding Registration of Text-Enabled Toll-Free Numbers, DA 16-1259 (rel. Nov. 4, 2016).

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which address the management of toll-free number assignment for voice services. Despite any assertions to the contrary by Somos or its proxies, “fold[ing] texting into the long-standing . . . system” would serve as a definitional example of a rule change and thus, cannot be achieved by granting Somos’ petition.² The FCC has repeatedly found that declaratory rulings “may not be used to substantively change a rule.”³

Furthermore, the substance of the Petition is problematic and would likely result in harm to the consumer interest and the emerging texting on toll-free industry. Somos’ request would upend the core principle of toll-free numbering—the subscriber of record should be the primary authority regarding use of the number—by placing RespOrgs in the position of authority for decisions on whether to text-enable a number. The relief being sought would also establish a regulation-mandated monopoly for Somos’ Text and Smart Services (“TSS”) registry, giving it a leg up on all other verification methods. The Nov. 6, 2017 Ex Parte fails to directly address any issues that would be addressed by the Petition. Instead it makes a variety of erroneous, unsubstantiated allegations about the toll-free texting marketplace and Zipwhip’s market position. These claims are patently false and more importantly, do not relate in any way to substance of the Petition or the potential harm it would cause.

Indeed, the foundation of Somos’ Petition is based on hypothetical harms and the Petition fails to identify any specific market failures that require the Commission’s regulatory intervention. As Zipwhip has reiterated many times before, there is no epidemic of toll-free numbers being hijacked or text-enabled without permission. The industry is doing a good job today of managing these issues with guidelines in place to ensure there is proper verification and to address any risks of harm to consumers, including the recent CTIA Messaging Principles and

² See e.g., Notice of Ex Parte Meetings from CSF/Aerialink et al., WC Docket No. 95-155, WT Docket No. 08-7 (Nov. 6, 2017) (“Nov. 6, 2017 Ex Parte”).

³ See Part 15 Amendment Order ¶ 2 (declining petitioner’s statutory interpretation because it would expand the definition so significantly it would essentially be a rule change); see also *Petition of STi Prepaid, LLC for Declaratory Ruling, or in the Alternative, Petition for Waiver*, 28 FCC Rcd 00153 (2013) (denying a petition for declaratory ruling, but granting a waiver, because the existing rule was clear and “no controversy or uncertainty exists”); *Commnet Wireless, LLC Petition for Declaratory Ruling*, 27 FCC Rcd 4324 (WTB 2012) (dismissing petition and noting that the Commission uses the rulemaking process to promulgate new requirements); *North American Telecommunications Association*, 101 FCC 2d 349, 371 (1985) (classification of services under existing rule may be accomplished through declaratory ruling, but rule changes more appropriately handled in rulemaking).

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Best Practices. As Chairman Pai has said, “regulators should be skeptical of pleas to regulate rivals, dispense favors, or otherwise afford special treatment.”⁴

The Commission must ignore the protestations from parties like Somos who seek action that is contrary to the Chairman’s regulatory philosophy. The FCC should deny the Petition and instead encourage continued industry management of this issue and facilitate innovation and growth in the marketplace. “Consumers benefit most from competition, not preemptive regulation. Free markets have delivered more value to American consumers than highly regulated ones.”⁵

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven A. Augustino". The signature is stylized with a large, sweeping initial "S" and a long, horizontal stroke extending to the right.

Steven A. Augustino

Counsel to Zipwhip, Inc.

⁴ FCC Chairman Ajit Pai Bio, Regulatory Philosophy, *available at* https://www.fcc.gov/about/leadership/ajit-pai?qt-leadership_tabs=0#qt-leadership_tabs (“Pai Philosophy”).

⁵ *Id.*